

NOV 28 2007

COURT OF APPEALS  
DIVISION TWOIN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION TWO

JASON N.,

Petitioner,

v.

THE HONORABLE GILBERT V.  
FIGUEROA, Judge of the Superior Court  
of the State of Arizona, in and for the  
County of Pinal,

Respondent,

and

THE STATE OF ARIZONA PINAL  
COUNTY ATTORNEY'S OFFICE,

Respondent/Real Party in Interest.

BRANDY B.,

Petitioner,

v.

THE HONORABLE GILBERT V.  
FIGUEROA, Judge of the Superior Court  
of the State of Arizona, in and for the  
County of Pinal,

Respondent,

and

THE STATE OF ARIZONA PINAL  
COUNTY ATTORNEY'S OFFICE,

Respondent/Real Party in Interest.

2 CA-SA 2007-0089

2 CA-SA 2007-0090

(Consolidated)

DEPARTMENT B

DECISION ORDER

SPECIAL ACTION PROCEEDING

Pinal County Cause Nos. JV 2003-00081 and JV 2007-00342

JURISDICTION ACCEPTED; RELIEF DENIED

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¶1 Petitioners in these special actions, which we have consolidated, are juveniles who were detained during the weekend after they were charged in delinquency petitions with committing various offenses. The juvenile hearing officer who presided over their initial appearances refused their requests to enter admissions to the charges based on Pinal County Superior Court Administrative Order No. 2007-00024 (the Administrative Order), which prohibits juvenile hearing officers from accepting any admissions at a detention/advisory hearing held during weekends or holidays. Petitioners contend the Administrative Order and the assignment of juvenile hearing officers to preside over their initial hearings violated their right to enter admissions to the charges pursuant to Rule 28(C)(7)(a), Ariz. R. P. Juv. Ct.

## SPECIAL ACTION JURISDICTION AND STANDARD OF REVIEW

¶2 The challenged rulings, entered following initial advisory/detention hearings, are not final orders. *See generally* A.R.S. § 8-235. Therefore, the juveniles have no “equally plain, speedy, and adequate remedy by appeal,” a factor favoring acceptance of special action jurisdiction. Ariz. R. P. Spec. Actions 1(a). Additionally, petitioners raise questions of law involving the application of procedural rules and statutes, further rendering appropriate our review of the claims raised in these special actions. *See ChartOne, Inc. v. Bernini*, 207 Ariz. 162, ¶¶ 8-9, 83 P.3d 1103, 1106-07 (App. 2004) (questions of law “particularly appropriate for special action review”); *see also Haas v. Colosi*, 202 Ariz. 56, ¶ 3, 40 P.3d 1249, 1251 (App. 2002).

¶3 Petitioners concede their claims are moot but ask this court to accept jurisdiction nevertheless. Quoting *In re JV-111701 v. Superior Court*, 163 Ariz. 147, 149, 786 P.2d 998, 1000 (App. 1989), petitioners assert “the issues presented [‘]are of substantial importance and will continuously affect a large number of juveniles[’] being prosecuted within Pinal County.” *See also Otel H. v. Barton*, 208 Ariz. 312, ¶ 4, 93 P.3d 512, 513 (App. 2003) (acknowledging pre-adjudication detention issue moot as to juvenile challenging order, but accepting special action jurisdiction because petition raised “a constitutional question of statewide importance that is likely to recur, and to evade review”). The real party in interest State of Arizona agrees the issues are moot and for the same reasons, urges us to accept jurisdiction.

¶4 Petitioners must establish the respondent judge “proceeded or is threatening to proceed without or in excess of jurisdiction or legal authority,” or that he abused his discretion by entering an administrative order preventing petitioners from entering admissions at their advisory hearings, as provided in Rule 28(C)(7)(a), Ariz. R. P. Juv. Ct. Ariz. R. P. Spec. Actions 3(b), (c). A court abuses its discretion by committing an error of law. *Twin City Fire Ins. Co. v. Burke*, 204 Ariz. 251, ¶ 10, 63 P.3d 282, 285 (2003). The determination of whether the respondent judge properly could assign juvenile hearing officers to preside over advisory hearings held during weekends and holidays and prohibit them from accepting any admissions involves questions of law that we review de novo. *See Yarbrough v. Montoya-Paez*, 214 Ariz. 1, ¶ 11, 147 P.3d 755, 758 (App. 2006) (“Interpretation of Arizona’s venue statutes involves questions of law that we review de novo.”); *Perguson v. Tamis*, 188 Ariz. 425, 427, 937 P.2d 347, 349 (App. 1996) (interpretation of court rule is question of law subject to de novo review).

## **BACKGROUND**

¶5 Petitioner Brandy B. was detained on Friday, July 20, 2007, and charged in a delinquency petition with three misdemeanors: two counts of threatening and intimidating/domestic violence and disorderly conduct/domestic violence. Petitioner Jason N. was detained on Friday, June 29, 2007, and charged with armed robbery, a class two felony, and possession or consumption of alcohol by a person under the legal drinking age, a class one misdemeanor. He was advised the following day at the advisory hearing that a

petition to revoke probation had been filed as well, based, in part, on the offenses charged in the delinquency petition. Both petitioners attempted to enter admissions to the allegations of the petitions at the advisory hearings held in their cases over the weekend in accordance with Rule 28(B)(1), Ariz. R. P. Juv. Ct.<sup>1</sup> Juvenile Hearing Officer Hank Gooday presided over petitioners' advisory hearings and refused their requests to enter admissions to the petitions, finding he lacked the authority to do so based on the Administrative Order, the relevant portions of which are set forth below.

¶6 Pursuant to the state's motion, the petition against Brandy was dismissed without prejudice; the state explained in its motion that it "may re-file in adult court." Pursuant to the state's notice of automatic transfer, the respondent judge transferred Jason to the adult division of Pinal County Superior Court for prosecution as an adult and dismissed the petition to revoke standard probation; Jason was charged by grand jury indictment with the same offenses set forth in the delinquency petition.

## DISCUSSION

¶7 We interpret statutes and procedural rules consistently with the intent of the drafters, looking first at the "plain language [of the provision, because it is] . . . the best indicator of that intent." *Nordstrom v. Leonardo*, 214 Ariz. 545, ¶ 10, 155 P.3d 1069, 1072 (App. 2007), *quoting Fragoso v. Fell*, 210 Ariz. 427, ¶ 7, 111 P.3d 1027, 1030 (App. 2005).

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<sup>1</sup>The advisory hearings were combined with the mandatory detention hearing. *See* Ariz. R. P. Juv. Ct. 23(D).

If a rule or a statute is “clear and unambiguous, we give effect to that language and do not employ other methods of statutory construction.” *Id.* And rather than “hastily find a clash between a statute and [a] court rule,” we attempt to harmonize the two. *Graf v. Whitaker*, 192 Ariz. 403, ¶ 11, 966 P.2d 1007, 1010 (App. 1998).

¶8 Section 8-202(A), A.R.S., provides the juvenile court with “original jurisdiction over all delinquency proceedings” brought under Title 8. The juvenile court also has jurisdiction over civil traffic violations and certain offenses that are specified in A.R.S. § 8-323(B), including, inter alia, driving violations that are not felonies; offenses involving the purchase, possession or consumption of alcohol by a minor; curfew and truancy violations; defacing property with graffiti; and the purchase or possession of tobacco.<sup>2</sup> A.R.S. § 8-202(E). Section 8-323(A) authorizes the presiding judge of the juvenile court to appoint juvenile hearing officers to conduct detention hearings, *see* Rule 23(D), (H), Ariz. R. P. Juv. Ct., and to hear cases involving the offenses listed. Specifically, § 8-323(B) provides as follows:

Subject to the orders of the juvenile court a juvenile hearing officer may hear and determine juvenile pretrial detention hearings and may process, adjudicate and dispose of all cases

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<sup>2</sup>Though not implicated here, A.R.S. § 8-202(E) permits the presiding judge to decline jurisdiction over civil traffic offenses and offenses under § 8-323(B) for reasons specified in § 8-202(E).

that are not classified as felonies and in which a juvenile who is under eighteen years of age on the date of the alleged offense is charged with violating any law relating to

the listed offenses.

¶9 Rule 28, Ariz. R. P. Juv. Ct., sets forth the procedure for advisory hearings, granting to juveniles certain procedural rights designed to safeguard various constitutional rights. Rule 28(A) requires the juvenile court to set an advisory hearing after the state files a petition alleging a juvenile has committed delinquent or incorrigible acts. The purpose of the advisory hearing is to advise the juvenile and his or her parent or guardian of the allegations in the petition and determine “whether the juvenile admits or denies the allegations.” Ariz. R. P. Juv. Ct. 28(A). A detained juvenile is entitled to an advisory hearing within twenty-four hours after a petition is filed. Ariz. R. P. Juv. Ct. 28(B)(1); *see also* Ariz. R. P. Juv. Ct. 23(C) (juvenile entitled to detention hearing within twenty-four hours of the filing of a delinquency or incorrigibility petition or criminal complaint). At the advisory hearing, the court is required to advise the juvenile and his or her parent or guardian of the juvenile’s constitutional rights. *See* Ariz. R. P. Juv. Ct. 28(c). Additionally, the court shall “[d]etermine whether the juvenile wishes to admit or deny the allegations [of the petition].” Ariz. R. P. Juv. Ct. 28(C)(7). The rule further provides that, “[i]f the juvenile wishes to admit to allegations, the court shall accept the admission or plea if supported by a factual basis and a finding that the juvenile knowingly, intelligently and voluntarily waives” the rights specified in the rule. Ariz. R. P. Juv. Ct. 28(C)(7)(a).

¶10 On June 11, 2007, the respondent judge and the Honorable Boyd T. Johnson, Presiding Judge of the Pinal County Superior Court, entered the Administrative Order. The order begins with an acknowledgment of two previous administrative orders with which we have not been provided but that presumably assigned to juvenile hearing officers the duty of presiding over hearings conducted on weekends and holidays. The June 2007 Administrative Order further provides, in relevant part, as follows:

WHEREAS, the Presiding Judge of Juvenile Court may impose limits on what Juvenile Hearing Officer's (sic) may hear and determine per ARS § 8-323; and

WHEREAS, the Presiding Judge of Juvenile Court and the Presiding Judge of the Superior Court have determined that the primary focus of juvenile weekend/holiday Court is to assure that all youth who are delivered into the custody of the Pinal County Youth Justice Center are seen by a Juvenile Court Hearing Officer within 24 hours of detention; and

WHEREAS, the Juvenile Court Hearing Officer's primary function is to advise the youth of any Petitions or charges then pending and then to make a determination as to probable cause and detention issues; and

WHEREAS, issues such as victim notification, parental notification, personnel training and or issues of proper documentation or records may exist on weekends/holidays which do not exist during regular Court days; and to assure that no child, victim, parent or other participant is misled or is otherwise deprived of any due process rights; and

WHEREAS, this Administrative Order is intended to assure the rights of all participants, the juvenile, the parents, the victims, the State and the Defense, are protected and that all



participants are well informed and able to present their side of the case in a timely and meaningful manner; and

FURTHER, pursuant to ARS § 8-323(B), no Juvenile Court Hearing Officer may adjudicate or dispose of any cases classified as felonies, therefore, other than to determine probable cause and to decide detention issues, the Juvenile Court Hearing Officer will not consider any request for further action regarding a child charged with a felony; now

THEREFORE, IT IS ORDERED directing that all Juvenile Court Hearing Officer's (sic) refrain from processing or accepting any admissions from any child during weekend/holiday Court sessions.

Based on the Administrative Order, Juvenile Hearing Officer Gooday refused petitioners' requests to enter admissions to the delinquency petitions.

¶11 As previously noted, Rule 28(C)(7)(a) gives a juvenile the right to admit allegations in a delinquency petition at the advisory hearing. The rule presupposes the hearing will be conducted by a person authorized to conduct the hearing and accept the admissions. Although § 8-323 gives the presiding judge of the juvenile court the authority to limit the powers and duties of a juvenile hearing officer, as the state correctly contends, he or she may not contravene a procedural right guaranteed by supreme court rule. We think the rule and the statute can be given full effect without one offending the other. *See David G. v. Pollard*, 207 Ariz. 308, ¶ 15, 86 P.3d 364, 367 (App. 2004) (“[W]e conclude that the procedures in § 8-323 reasonably supplement, and do not contradict, the relevant Juvenile Rules of Procedure.”). But the Administrative Order is problematic.

¶12 Although § 8-323 is not entirely clear, it appears to limit the authority of juvenile hearing officers to conduct detention hearings in all cases and to process non-felonies in the kinds of cases specified in subsection B.<sup>3</sup> With respect to the cases specified in subsection B, the statute does not expressly prohibit a juvenile hearing officer from accepting admissions; indeed § 8-323(F) presupposes that the hearing officer can process and accept admissions. *See* § 8-323(F) (providing disposition alternatives “on an admission by the juvenile of a violation charged pursuant to this section”). Yet the Administrative Order prohibits the juvenile hearing officer from “processing or accepting any admissions from any child during weekend/holiday Court sessions.”

¶13 Petitioner Brandy B. was charged with class one misdemeanors that are not among the offenses listed in § 8-323(B). Jason N. was charged with armed robbery, a felony, and possession or consumption of alcohol as a juvenile, a misdemeanor and one of the enumerated offenses. *See* § 8-323(B)(2). Although the alcohol-related offense is one that the juvenile hearing officer could “process, adjudicate and dispose of,” § 8-323(B), presumably the statute prohibited the hearing officer from doing so here because the offense

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<sup>3</sup>The statute could also be construed as creating two categories of cases a juvenile detention officer may process: non-felonies (that is, misdemeanors) and the enumerated offenses. That may have been how the respondent judge interpreted the statute. He acknowledged in the Administrative Order that the statute prohibits hearing officers from “adjudicat[ing] or dispos[ing] of” felonies; he did not limit the hearing officers’ authority to processing only the offenses specified in § 8-323(B). We need not determine the correct interpretation of the statute on this point, however, because under either interpretation, we reach the same conclusion.

was alleged in the same petition as the felony. As to both petitioners, then, given the nature of petitioners' alleged offenses, the Administrative Order is consistent with the statute insofar as it prohibited the hearing officer from "processing or accepting" their admissions.<sup>4</sup> But because juvenile hearing officers, rather than judges or judges pro tempore with full authority, are assigned to matters arising on weekends and holidays in Pinal County, Jason and Brandy were deprived of the opportunity to enter admissions at their advisory hearings as provided by Rule 28(C)(7)(a). So, too, are similarly situated juveniles.

¶14 By assigning weekend and holiday advisory hearings to juvenile hearing officers and prohibiting them from accepting any admissions by a juvenile, even when permitted by statute, it would appear the order treats juveniles whose initial detention and advisory hearings are held on a weekend or holiday differently than those whose hearings are conducted during weekday court sessions.<sup>5</sup> Nothing in Rule 28 authorizes disparate procedures for the two groups of juveniles. *Cf. JV-111701*, 163 Ariz. at 151-52, 786 P.2d at 1002-03 (accepting juvenile's argument that equal protection rights were violated by

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<sup>4</sup>We note that, based on the language and sentence structure of § 8-323(B), it could be interpreted as prohibiting hearing officers from conducting advisory hearings in any cases other than those involving the listed offenses. That is because it could prohibit hearing officers from not only "adjudicat[ing]" and conducting the dispositions in non-listed cases, but "process[ing]" them as well. § 8-323(B). "Process[ing]" includes conducting the advisory hearing. *Id.* But again, our conclusion here does not depend on the resolution of this issue.

<sup>5</sup>This conclusion is based on our supposition that during the week a judge or judge pro tempore with the same authority as a judge would be available to accept any such admissions and that juveniles would be permitted to enter admissions.

juvenile rule that excluded weekends and holidays in calculating when juvenile must be brought before judge for initial hearing in contrast to analogous criminal rule, which did not authorize exclusion of weekends and holidays).

¶15 Moreover, the Administrative Order creates what is tantamount to a rule of practice peculiar to Pinal County that conflicts with Rule 28(C)(7). That practice violates Rule 5, Ariz. R. P. Juv. Ct., which permits the juvenile courts of Arizona’s counties to “make and amend rules governing [their] practice not inconsistent with” other rules of procedure in the juvenile court, “subject to approval by the Supreme Court.” Rule 5 further provides, “[i]n all cases not provided for by rules, the juvenile court may regulate its practice in any manner not inconsistent with these rules or local rules.” Additionally, trial courts lack “inherent authority to issue an order that either supersedes or supplements the explicit provisions of a supreme court procedural rule unless it first adopts a local rule and receives approval of that rule from the supreme court.” *Bergeron ex rel. Perez v. O’Neil*, 205 Ariz. 640, ¶ 29, 74 P.3d 952, 962 (App. 2003).

¶16 We note that the state does not acknowledge, much less address, the conflict between the Administrative Order and Rule 28(C)(7)(a). And neither the state nor petitioners discuss the tension between Rule 28(C)(7)(a) generally and various other rules and statutes. For example, Rule 34, Ariz. R. P. Juv. Ct., gives the prosecutor fifteen days from the date of the advisory hearing to decide whether to file a motion “requesting that the juvenile court waive jurisdiction and order the transfer of the juvenile to the appropriate court for criminal

prosecution.” If a juvenile were to enter an admission at an advisory hearing, that would effectively cut off the state’s right to seek a transfer. Moreover, there are potential conflicts between Rule 28 and the statutes requiring that certain juveniles be transferred for prosecution as adults. *See generally* A.R.S. § 8-302(C); A.R.S. § 13-501. And, as the Administrative Order clearly acknowledges, equally important, constitutionally protected victims’ rights potentially are at issue in these proceedings and must be considered. *See* Ariz. Const. art. II, § 2.1; A.R.S. §§ 8-381 through 8-421.

¶17 But at least with respect to juveniles charged with any of the offenses enumerated § 8-323(B) or under circumstances in which the hearing officer could be authorized to entertain admissions in other cases,<sup>6</sup> such conflicts, as well as the potential for mischief,<sup>7</sup> could be avoided by an administrative order that permitted a juvenile to enter admissions on weekends or holidays but required the hearing officer to defer acceptance of the admissions, as specifically authorized by Rule 28(E). More problematic is the fact that juvenile hearing officers are not permitted to “process, adjudicate and dispose of ” felony cases and may not have the authority in the first instance to conduct advisory hearings in any non-felony cases other than those involving the enumerated offenses. § 8-323(B).

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<sup>6</sup>This would include circumstances in which the hearing officer were also a judge pro tempore.

<sup>7</sup>Juveniles could hurriedly enter admissions, implicating the attachment of jeopardy for purposes of the prohibition against double jeopardy, in order to avoid being transferred for either discretionary or mandatory prosecution as an adult. *See Aragon v. Wilkinson*, 209 Ariz. 61, ¶ 7, 97 P.3d 886, 889 (App. 2004) (jeopardy attaches when court accepts guilty plea).

¶18 We conclude that, to the extent the Administrative Order prohibits juvenile hearing officers from accepting admissions in cases the officers are otherwise authorized to accept, the order conflicts with Rule 28, Ariz. R. P. Juv. Ct. because it takes from a juvenile the procedural right to enter admissions in such cases. And with respect to juveniles such as petitioners, charged with felonies or offenses other than those specified in § 8-323(B), the practice of having only juvenile hearing officers available on weekends and holidays similarly conflicts with Rule 28 when the juvenile wishes to admit the allegations in the petition. Juvenile Hearing Officer Gooday abided by the Administrative Order, but as a consequence, he violated Brandy's and Jason's procedural rights under Rule 28. Accordingly, although we deny petitioners' special action relief because of mootness, *see Otel H. v. Barton*, 208 Ariz. 312, ¶ 10, 93 P.3d 512, 514 (App. 2003), we direct the respondent judge to alter the juvenile court's policies and practices and to enter any additional orders the respondent judge deems necessary that are consistent with this decision.

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PHILIP G. ESPINOSA, Judge

Presiding Judge Eckerstrom and Judge Vásquez concurring.